

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Team # 3	CCRB Case #: 201305607	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/22/2013 8:30 PM	Location of Incident: In front of 112 Ocean Avenue	Precinct: 122	18 Mo. SOL 12/22/2014	EO SOL 12/22/2014	
Date/Time CV Reported Mon, 06/24/2013 12:25 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/24/2013 12:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Justin Farren	04385	930127	NARCBSI
3. DT3 Michael Fahmy	01434	936561	NARCBSI
4. DT3 Mathew Reich	00122	933211	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Marshall	25053	938942	NARCBSI
2. DT3 Gerard Delprete	01973	923749	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Michael Fahmy	Abuse: Det. Michael Fahmy questioned § 87(2)(b)	
B.DT3 Mathew Reich	Abuse: Det. Mathew Reich threatened to arrest § 87(2)(b)	
C.DT3 Michael Fahmy	Abuse: Det. Michael Fahmy searched the car in which § 87(2)(b) was an occupant.	
D.DT3 Michael Fahmy	Abuse: Det. Michael Fahmy initiated the search of § 87(2)(b)	
E.DT3 Michael Fahmy	Abuse: Det. Michael Fahmy facilitated the frisk of § 87(2)(b)	
F.DT3 Mathew Reich	Abuse: Det. Mathew Reich facilitated the frisk of § 87(2)(b)	
G.SGT Justin Farren	Abuse: Sgt. Justin Farren supervised the frisk of § 87(2)(b)	
H. An officer	Abuse: An officer searched § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

On June 24, 2013, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board by telephone (encl. 5A-B). On June 22, 2013, at 8:30 p.m., PO Steven Marshall of Narcotics Borough Staten Island arrested § 87(2)(b) in front of 112 Ocean Avenue in Staten Island. The following allegations resulted:

Allegation A—Abuse of Authority: Det. Michael Fahmy questioned § 87(2)(b)

§ 87(2)(g)

Allegation B—Abuse of Authority: Det. Mathew Reich threatened to arrest § 87(2)(b)

§ 87(2)(g)

Allegation C—Abuse of Authority: Det. Michael Fahmy searched the vehicle in which § 87(2)(b) **was an occupant.**

Allegation D—Abuse of Authority: Det. Michael Fahmy initiated the search of § 87(2)(b)

§ 87(2)(g)

Allegation E—Abuse of Authority: Det. Michael Fahmy facilitated the frisk of § 87(2)(b)

Allegation F—Abuse of Authority: Det. Mathew Reich facilitated the frisk of § 87(2)(b)

Allegation G—Abuse of Authority: Sgt. Justin Farren supervised the frisk of § 87(2)(b)

§ 87(2)(g)

Allegation H—Abuse of Authority: An officer searched § 87(2)(b)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(2)(g)

On July 9, 2013, during her CCRB interview, § 87(2)(b) was presented with her options of mediation and investigation, and requested more time to consider them. On July 17, 2013, during a telephone conversation with the investigator, she opted for an investigation, § 87(2)(b)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) *old on the incident date, § 87(2)(b) is a white female, 5'6", 128 pounds with blonde hair and hazel eyes.*

CCRB Testimony

On July 9, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 6A-G).

On June 22, 2013, at approximately 8 p.m., § 87(2)(b) went into a deli at 112 Ocean Avenue in Staten Island to purchase a pack of cigarettes. As she approached the deli in her silver Honda sedan, she saw a male, who she did not know by name, but with whom she was familiar, enter the deli. § 87(2)(b) described him as a bald white male in his thirties, 5'5" with a stocky build and knew him as a drug addict. This male was identified by the investigation as § 87(2)(b). § 87(2)(b) parked her car on Ocean Avenue, alongside the deli. She then entered the deli and spent about three minutes therein. § 87(2)(b) saw § 87(2)(b) in the store and he tried to engage her in conversation. She believed that § 87(2)(b) was trying to make it look like he was with her to protect himself from police attention. § 87(2)(b) looked at § 87(2)(b) but did not talk to him. She purchased a pack of cigarettes, left the store and returned to her vehicle.

At the time of the incident, § 87(2)(b) wore a blue v-neck t-shirt, jeans and sneakers without socks. Her hair was in a ponytail. She had nothing in her pockets because everything was in her pocketbook. § 87(2)(b) brought the same pocketbook to her CCRB interview, and it was photographed. The pocketbook contained her glasses, cell phone, wallet, pack of cigarettes, keys, son's cell phone, scrunchie, iPod, make up, mirror and pack of bubble gum.

A black unmarked sedan stopped directly in front of and perpendicular to § 87(2)(b)'s vehicle. The passenger, who § 87(2)(b) described as a Hispanic male in his thirties, 5'7" with a chunky build and short, black hair, and was identified by the investigation to be Det. Mathew Reich of Narcotics Borough Staten Island, who was in plainclothes, exited the car. He approached § 87(2)(b)'s window and asked her to roll it down, and she complied. § 87(2)(b)'s keys were in the ignition, and her pocketbook was on the passenger's seat, under the seatbelt. Det. Reich told § 87(2)(b) not to start the car, and requested her license. § 87(2)(b) asked Det. Reich who he was, and he replied that he was a cop. § 87(2)(b) asked where his uniform was, and he said he was undercover. § 87(2)(b) did not see a shield anywhere on Det. Reich's person, and he never showed her his shield. § 87(2)(b) gave him her license and he returned to his vehicle with it. He checked § 87(2)(b)'s name, and it was clear. He then returned to § 87(2)(b)'s vehicle.

Upon his return, Det. Reich asked § 87(2)(b) if she knew § 87(2)(b) why she was talking to him, and whether she went to the back of the store with him. § 87(2)(b) replied that she went into the store for two minutes, during which time she went to the register and

purchased an item. She denied that she went into the back of the store. Det. Reich then asked § 87(2)(b) to exit the vehicle, and stay in front of her car. She reached to grab her pocketbook and keys, but Det. Reich told her to leave them in the car. § 87(2)(b) asked why, and he told her, “Because you’re not going to need them on the hood.” § 87(2)(b) complied. § 87(2)(b) asked Det. Reich what she had done wrong, and he told her that the officers believed she was with § 87(2)(b). § 87(2)(b) replied that she did not know § 87(2)(b) and was not with him. She began to cry because she was nervous. Det. Reich told § 87(2)(b) “Stop crying like a baby, or I’ll handcuff you.” § 87(2)(b) told him that she was not a baby, and she would stop crying if he were nicer to her. She also told him that if he continued to be nasty to her, she was going to make a complaint about him. § 87(2)(b) explained to Det. Reich that § 87(2)(b) was a junkie, whom she had seen in front of her building, but she did not know him personally.

When § 87(2)(b) was in front of her car, Det. Reich asked her if she was sure she did not have anything on her. § 87(2)(b) told him not to assume that she had anything on her. § 87(2)(b) was in front of § 87(2)(b)’s vehicle, approximately two feet away from her, with another officer, who § 87(2)(b) described as a bald white male in his thirties, 5’8”, with a medium/muscular build, and was identified by the investigation to be Det. Michael Fahmy, also of Narcotics Borough Staten Island. § 87(2)(b) stood in front of the officer’s vehicle’s hood, facing it. Det. Fahmy first frisked § 87(2)(b)’s entire back, then his front. Det. Fahmy also checked inside § 87(2)(b)’s pockets and shoes. Upon searching § 87(2)(b), Det. Fahmy recovered heroin from his person. § 87(2)(b) was placed in a van and removed from the scene.

Det. Reich told § 87(2)(b) that they had to wait for female officers to arrive to search her. After they waited for about twenty minutes, three additional unmarked vehicles arrived, each with two plainclothes male officers. There was a red vehicle, blue vehicle and black vehicle. § 87(2)(b) was surrounded by eight males, and the vehicles were parked on all sides of her. One of the newly arrived officers, who she described as a white male in his thirties, over 6’, with a thin build and brown hair, and was identified by the investigation to be Sgt. Justin Farren, approached her and tried to calm her down. She said she could not calm down because she was in an unfamiliar predicament. The other officers did not approach her, and spoke to each other. While she was in front of the car, § 87(2)(b) noticed a white prisoner van across the street. The van was very close to § 87(2)(b) and she could see the prisoners looking at her. The door was open, and there were approximately eight prisoners inside. § 87(2)(b) was placed inside this van.

Det. Reich searched § 87(2)(b)’s pocketbook and car. He entered her vehicle through the driver’s door, and left this door open. His whole body was inside the car. Det. Reich searched § 87(2)(b)’s pocketbook while he was inside the car. He searched the glove compartment, removed all its contents, and placed them on the floor. § 87(2)(b) believed that the glove compartment contained a camera, papers, and windshield wiper fluid. § 87(2)(b) paid attention to Det. Reich’s actions because she was concerned he was going to plant something in her car. He opened the back door and searched the back seats, then opened the trunk and searched therein. § 87(2)(b) had cat food, boxes and blankets in the trunk. To § 87(2)(b)’s knowledge, there was nothing illegal in her vehicle at the time of the incident. She did not detect any odor of marijuana in the vicinity during the incident.

After about forty minutes since the incident’s commencement, two uniformed female officers arrived in a marked vehicle. They parked near a library, which is right across from the deli. Both female officers exited the vehicle. PO1, who § 87(2)(b) described as a white female in her thirties, 5’6-7”, 130 pounds with dark hair in a ponytail, and had been the driver, approached § 87(2)(b) and her partner, whom § 87(2)(b) only described as a white female, spoke with the other officers on the scene. PO1 asked to take § 87(2)(b) away from the car and against the wall of the store to search her. § 87(2)(b) told PO1 to do what she had to do and get

it over with. PO1 asked § 87(2)(b) to put her hands up against the deli's wall along Cedar Avenue, and she complied. PO1 then asked § 87(2)(b) if she had anything pointy in her pockets, or anything else in her pockets. § 87(2)(b) responded that she had nothing in her pockets. PO1 retrieved a pair of blue gloves from her uniform, and put them on. She frisked § 87(2)(b)'s back first, then her front. § 87(2)(b)'s midsection was exposed when PO1 lifted up her shirt. PO1 shook § 87(2)(b)'s shirt to see if anything fell out of it. She frisked § 87(2)(b)'s crotch area, and grabbed the crotch of her pants to determine if there was any object concealed inside. She reached into the front and back pockets of § 87(2)(b)'s jeans. She frisked § 87(2)(b)'s legs, one at a time. She frisked § 87(2)(b)'s shoes by pushing down on them. She frisked § 87(2)(b)'s breasts, grabbed her bra and shook it. She told § 87(2)(b) to remove her scrunchie, and shake her hair, all of which § 87(2)(b) did. § 87(2)(b) was embarrassed because many people who had come out of the deli and the Turkish restaurant were watching what was going on. PO1 then told Det. Reich, "She's clean," and Det. Reich told § 87(2)(b) she could leave. § 87(2)(b) returned to her vehicle, and left after a moment. The entire incident lasted about an hour and fifteen minutes.

On October 6, 2014, § 87(2)(b) was shown photo arrays at her home at § 87(2)(b) in Staten Island. One photo array included a photograph of PO Robin Lestrade of the 122nd Precinct and the other included a photograph of PO Jazmin Gorislavtev of the 122nd Precinct. § 87(2)(b) did not recognize any of the officers whose photographs were included in the arrays.

Attempts to Contact Civilians

On July 18, 2013, § 87(2)(b)'s name and address were obtained via his BADS arrest report. On the same date, he was mailed a please call letter, but this letter was subsequently returned to the CCRB marked "return to sender." A July 18, 2013 Lexis Nexis search for § 87(2)(b) did not yield any phone number, but did yield a different address, to which he was mailed a please call letter on September 19, 2013. This letter was also returned to the CCRB marked "return to sender." The investigation was unable to determine a viable address for § 87(2)(b) or establish contact with him.

§ 87(2)(g)

[REDACTED]

NYPD Statements:

Subject Officer: DET. MATHEW REICH

- § 87(2)(b) old on the incident date, Det. Reich is a white male, 5'9", 245 pounds with brown hair and eyes.
- On June 22, 2013, Det. Reich's tour began at 3p.m. and concluded at 11:33 p.m. His assignment was enforcement. He worked with Det. Fahmy in an unmarked sedan, which he believed was a black Mazda. He was in plainclothes.

Memo Book

Det. Reich noted in his memo book that at 8:30 p.m., he arrested § 87(2)(b) for heroin in front of 112 Ocean Avenue. He completed a UF250 report regarding a white female (encl. 10A-C).

CCRB Testimony

On March 13, 2014, Det. Reich was interviewed at the CCRB (encl. 10D-E).

On June 22, 2013, at approximately 8:30 p.m., Det. Reich and Det. Fahmy were conducting surveillance of a drug-prone location, watching for narcotics sales. They observed § 87(2)(b) walk into a corner store at 112 Ocean Avenue, and converse with a white female, who they later determined to be § 87(2)(b). Det. Reich observed that § 87(2)(b) and § 87(2)(b) touched hands during their conversation. Det. Reich estimated that he was about four or five car lengths away when he initially observed § 87(2)(b). Det. Reich could not recall whether § 87(2)(b) was already inside the store when § 87(2)(b) entered. The door to the store was open, allowing Det. Reich to see inside. § 87(2)(b) and § 87(2)(b) interacted inside the store, directly in front of the door. Det. Reich did not know whether § 87(2)(b) and § 87(2)(b) conversed before touching hands. Det. Reich did not know whether they exchanged any object or currency when they touched their hands. When asked which part of their hands touched, he said it was not a handshake. He also said that, "It's what a narcotics transaction would be like...that's what it resembled." Det. Reich was asked if he said it was what a narcotics transaction looked like because it was quick, and he said that he could not explain exactly what a narcotics transaction was like, but he confirmed that he suspected them of a narcotics transaction, and their conversation did not appear to be one between friends. When asked why else he suspected such, he explained that it was a narcotics-prone location. He said that there was a house down the block wherein heroin was sold, and specifically that corner was a heroin prone location.

Det. Reich and Det. Fahmy pulled up to the location, and stepped out of their vehicle. Det. Reich approached § 87(2)(b) who had heroin in his hand at that point, which he then dropped to the ground. Det. Reich then placed § 87(2)(b) under arrest, and notified the field team, which arrived a few minutes later. During his CCRB interview, Det. Reich said he had no idea which members of the field team arrived at the scene. After placing § 87(2)(b) under arrest, Det. Reich asked § 87(2)(b) who the female with whom he interacted had been, and § 87(2)(b) said that he asked her for a cigarette. Det. Reich called for the field team, and they arrived a few minutes later. When the field team arrived and placed § 87(2)(b) in the van, Det. Reich went into the store to check the camera footage to determine whether the interaction between § 87(2)(b) and § 87(2)(b) involved a hand to hand transaction, but he was unable to tell from the footage.

Det. Reich did not believe he looked inside § 87(2)(b)'s pocketbook. He denied that he looked inside her car. Det. Reich did not know whether he looked into the car without going inside of it. He did not recall what the car looked like.

Det. Reich confirmed that the UF250 he prepared was in regards to the stop of § 87(2)(b). When asked whether he filled out the UF250 report because she was frisked, Det. Reich said he filled it out because she was stopped and due to her actions. He did not know whether a female officer was called to the scene to frisk § 87(2)(b). When asked if that is what usually happens in these types of situations, he responded only “if we’re gonna lock them up.” He reiterated that he was inside the store reviewing the video footage most of the time that the field team was on scene. When asked if he made any observations of § 87(2)(b), Det. Reich said that when Det. Fahmy approached, she cried and screamed, and was “very irate.” Det. Reich denied interacting with § 87(2)(b) extensively. When he asked her for identification so he could complete the UF250, she refused. He denied telling her to stop crying like a baby or he would handcuff her. Det. Reich did not obtain her information, so the UF250 was filled out regarding a white female. Det. Reich was informed that the investigator had not been able to locate the UF250 report, and was asked what he indicated on the form as the reason for suspicion. He responded that it would have been criminal sale of a controlled substance. Det. Reich explained that after he completes a UF250 report, he submits it to his command, and it is subsequently submitted to the appropriate precinct.

Subject Officer: DET. MICHAEL FAHMY

- § 87(2)(b) old on the incident date, Det. Fahmy is a bald white male, 5’9”, 190 pounds with hazel eyes.
- On June 22, 2013, Det. Fahmy worked from 3 p.m. until 11:33 p.m. His assignment was enforcement in the 122/123 module. He worked with Det. Reich in plainclothes. They were assigned to an unmarked vehicle, which Det. Fahmy believed was black or grey Mazda 6.

Memo Book

Det. Fahmy noted in his memo book that at 8:30 p.m., one person was arrested for heroin in front of 112 Ocean Avenue. Det. Reich completed a UF250 (encl.8A-B).

CCRB Testimony

On November 26, 2013, Det. Fahmy was interviewed at the CCRB (encl. 8C-D). Det. Fahmy’s statement was generally consistent with Det. Reich’s statement, and is summarized below with inconsistencies noted.

On June 22, 2013, they observed a residential location opposite 112 Ocean Avenue, § 87(2)(e)

As Det. Fahmy and Det. Reich watched the location, Det. Fahmy observed a white male, determined to be § 87(2)(b) approach the corner, and a female, determined to be § 87(2)(b) exit the store. § 87(2)(b) walked toward her car, which was parked by the corner, and § 87(2)(b) approached her. They had a conversation on the corner right in front of 112 Ocean Avenue, and § 87(2)(b) handed something to § 87(2)(b) however, Det. Fahmy did not know what the object was.

§ 87(2)(b) then walked toward the store, and § 87(2)(b) toward her vehicle. The detectives remained in their vehicle, parked directly in front of the location. Det. Fahmy believed that he was in the passenger’s seat, which was the farther. He could not hear what was said during the conversation, which lasted about a minute or less. Det. Fahmy could not see what object § 87(2)(b) passed to § 87(2)(b). He believed that she retrieved the object from her pocketbook. Det. Fahmy believed that he had observed a narcotics transaction due to the location and his training.

The detectives exited their vehicle. Det. Reich approached § 87(2)(b) who was in the doorway of the store at 112 Ocean Avenue. As Det. Reich approached him, he threw

something onto the ground, which Det. Reich recovered, and upon doing so, determined that § 87(2)(b) had thrown numerous glassines of heroin onto the ground. Det. Reich consequently handcuffed § 87(2)(b) and placed him under arrest. § 87(2)(b) provided identification and was searched incident to arrest. Det. Reich and Det. Fahmy asked § 87(2)(b) who § 87(2)(b) was; and he said that he did not know her, but asked her for a cigarette, which she provided.

Det. Fahmy approached § 87(2)(b)'s vehicle, and knocked on the window. He identified himself verbally and his shield was around his neck. He asked § 87(2)(b) for identification, which she provided. Det. Fahmy then asked who the man she spoke to was, and what they were speaking about. § 87(2)(b) yelled at Det. Fahmy, and denied that she was speaking to anyone, or knew the male in question. § 87(2)(b) started crying almost immediately when Det. Fahmy approached. Det. Fahmy then pointed to § 87(2)(b) who stood with Det. Reich a few feet away on the sidewalk, and said, "That guy right there." Det. Fahmy again asked who the male was, and what § 87(2)(b) had handed to him. § 87(2)(b) again denied that she knew § 87(2)(b) or gave him anything. Because § 87(2)(b)'s answer was inconsistent with the explanation that § 87(2)(b) had provided, Det. Fahmy instructed her to exit her vehicle. Det. Fahmy explained that he asked her to exit the vehicle for his safety because she had provided evasive answers to his questions, and because he could not see her hands or movements inside the car. He had observed her make movements with her arms while yelling and crying. When Det. Fahmy asked for her identification, she fumbled with her wallet. When asked more specifically what the female did with her wallet, Det. Fahmy explained that when asked for identification, she yelled at him, asking what the situation was about. When asked if she made any significant movements when locating her identification, Det. Fahmy confirmed that she moved, and reiterated that he would not be able to see all of her movements inside the car. Det. Fahmy denied that he feared for his safety for any other reason besides the female's evasive answers.

Once § 87(2)(b) was out of the car, Det. Fahmy tried to calm her down and explained that it appeared to the detectives that she had been involved in a narcotics transaction, and that § 87(2)(b) had just been found to be in possession of narcotics, and placed under arrest. After a couple minutes, § 87(2)(b) calmed down, and denied that she had anything to do with § 87(2)(b)'s narcotic possession, but admitted that he had asked her for a cigarette, which she had provided. Det. Fahmy told her to calm down and stop crying. Det. Reich did not tell § 87(2)(b) "Stop crying like a baby or I'll handcuff you." There was no discussion of arresting her.

Det. Fahmy believed that they called a female officer to the scene, which he confirmed is protocol for when he stops a female for suspicion of a drug sale. He believed that a female officer responded to the scene. He did not know who the officer was, but explained that he would call the precinct's patrol, and ask for a female officer to respond. Det. Fahmy believed that a female officer frisked § 87(2)(b) but did not know for certain. He did not know whether the female was searched.

After § 87(2)(b) exited the vehicle, the driver's side door remained open. Det. Fahmy looked inside the car through the driver's door at the interior of the car. He then walked around to the passenger's side, and looked in the interior of the car from that side. He believed that the car's front two windows were open, and denied that the windows were tinted. Det. Fahmy saw groceries inside the car. He denied that he put his head or any part of his body inside the car. Det. Reich also looked through the car's windows, but did not put any part of his body inside the car. Det. Reich stood with § 87(2)(b) and did not walk to the passenger's side of the car. § 87(2)(b) stood there and did not do anything. Det. Fahmy denied that he or Det. Reich opened any additional door of the car or the trunk. He denied that he or Det. Reich searched § 87(2)(b)'s pocketbook.

Det. Fahmy stated that Det. Reich prepared a UF250 with respect to stopping § 87(2)(b) and she was released from the scene.

Subject Officer: SGT. JUSTIN FARREN

- § 87(2)(b) *old on the incident date, Sgt. Farren is a white male, 5'11", 197 pounds with brown hair and green eyes.*
- *On June 22, 2013, Sgt. Farren worked from 3 p.m. until 11:33pm. His assignment was the 122/133 module supervisor. He worked with PO Marshall and wore plainclothes. They were assigned to an unmarked vehicle, RMP number § 87(2)(b)*

Memo Book

Sgt. Farren noted in his memo book that at 8:30 there was an arrest made at 112 Ocean Avenue, § 87(2)(b), § 87(2)(b) male, white, § 87(2)(b) (encl. 11A-B).

CCRB Testimony

On May 21, 2014, Sgt. Farren was interviewed at the CCRB (encl. 11C-D).

Sgt. Farren was notified by either Det. Reich or Det. Fahmy that they had an arrest situation at the corner of 112 Ocean Avenue. When Sgt. Farren arrived, he observed a male, determined to be § 87(2)(b) in handcuffs, and a female, determined to be § 87(2)(b) leaning against a car on the corner. One of the detectives informed Sgt. Farren that while the detectives conducted surveillance on a location, they observed § 87(2)(b) approach § 87(2)(b) and hand him something. When the detectives approached § 87(2)(b) he either dropped or threw a bag of heroin to the ground, and was subsequently placed under arrest. Sgt. Farren believes that the detectives were conducting an investigation in regards to § 87(2)(b) to determine whether she would be arrested for criminal sale of a controlled substance.

§ 87(2)(b) stated to the detectives that she never spoke to § 87(2)(b) whatsoever, and simply went into the store. At that point Sgt. Farren and the detectives asked the deli owner if there were cameras, and Sgt. Farren and Det. Reich briefly went into the basement to review the footage, which revealed that § 87(2)(b) did interact with § 87(2)(b) but did not conclusively show what she handed him. Due to the inconclusive evidence, § 87(2)(b) was not arrested. However, because she had lied to the detectives, § 87(2)(b) was stopped. Sgt. Farren stated that the detectives should have taken her information to fill out a stop and question form, and that he was sure that he had instructed them to do so. However, he did not specifically remember telling either detective to fill out the form, or discussing the form with them. Sgt. Farren is not sure whether the form was completed, but reiterated that it should have been.

Sgt. Farren did not speak to § 87(2)(b) and did not recall asking her any questions. He did not observe her crying, or hear either detective tell her, "Stop crying like a baby or I will handcuff you". Sgt. Farren did not observe the detectives search any car, or § 87(2)(b)'s purse. He also stated that he neither saw her be frisked, nor instructed any detective to frisk her. Sgt. Farren could not recall whether anyone called for a female officer to come to the scene, or if he had done so himself. He also could not recall whether he observed any female officers on the scene or any officer informed him that § 87(2)(b) was frisked. Sgt. Farren did not see § 87(2)(b) leave the scene, as he was near the van ensuring that § 87(2)(b) was inside and secure. Sgt. Farren stated the van was approximately fifty to one hundred feet away from § 87(2)(b) and the detectives, so he did not see or hear their interaction at that time.

Sgt. Farren then returned to the 120th Precinct stationhouse, as did the van transporting § 87(2)(b)

Witness Officer: PO STEVEN MARSHALL

- § 87(2)(b) old on the incident date, PO Marshall is a white male, 6', 250 pounds with brown hair and eyes.
- On June 22, 2013 PO Marshall worked from 3:00 p.m. to 11:33 p.m. He was assigned to plainclothes narcotics enforcement. His partner was Sgt. Farren. The officers were assigned to unmarked RMP 47263, a black Mazda sedan.

Memo Book

PO Marshall noted that at 8:30 p.m., there was one male under arrest for § 87(2)(b) at 112 Ocean Ave (encl. 7A).

CCRB Testimony

On November 26, 2013, PO Marshall was interviewed at the CCRB (encl. 7B-C).

On June 22, 2013, at approximately 8:30 p.m., PO Marshall was informed that the field team had one individual under arrest at 112 Ocean Avenue. Det. Reich informed PO Marshall that the officers had observed a hand to hand narcotics transaction. When the officers had approached the man involved in the transaction, § 87(2)(b) he threw a glass vial of heroin to the ground. He was subsequently placed under arrest.

When PO Marshall arrived on scene, approximately five to ten minutes after he was called, he observed § 87(2)(b) in handcuffs. PO Marshall approached, verified the arrest, and clarified the evidence found. PO Marshall did not interact with any other individual at the scene.

Upon being shown a photograph of § 87(2)(b) PO Marshall said that he vaguely recognized her from the scene. He remembered § 87(2)(b) standing by her car. PO Marshall did not interact with § 87(2)(b) or see any other officer interact with her. PO Marshall did not hear any officer say "stop crying like a baby or I will handcuff you" to § 87(2)(b) PO Marshall did not hear any officer discuss arresting § 87(2)(b) PO Marshall did not observe § 87(2)(b) be frisked or searched. PO Marshall did not see any officer search any car at the scene, or § 87(2)(b)'s pocketbook.

PO Marshall indicated that it is standard procedure to investigate both individuals in a hand to hand narcotics transaction. § 87(2)(b) was arrested because he was observed throwing a vial of heroin to the ground. § 87(2)(b) was not arrested because she did not have any drugs on her person. PO Marshall was provided this information by his team, and did not conduct any search himself. PO Marshall was told that § 87(2)(b) was "clean."

NYPD Documents

UF250 Report

Det. Reich testified that he completed a UF250 report regarding his stop of § 87(2)(b) and indicated such in his memo book. Det. Fahmy corroborated such in his memo book and CCRB testimony. Sgt. Farren testified that there should have been a UF250 prepared in regards to stopping § 87(2)(b) but did not specifically recall the completion of the report, or instructing either detective to do so.

Searches for the computerized UF250 report by § 87(2)(b)'s name and date of birth, and the incident location came back negative (encl. 21C). As did a similar search by Det. Reich's name and tax number (encl. 21I). The computerized UF250 report index from the incident date does not list any report prepared by Det. Reich or in regards to the incident location (encl. 16B-

C). A request for any handwritten UF250 report prepared by Det. Reich on the incident date yielded negative results (encl. 21J), and the handwritten UF250 log does not list any UF250 report prepared by Det. Reich or in regards to the incident location (encl. 16A).

122nd Precinct Roll Call

There were only three female officers assigned to the 122nd Precinct on duty at the incident time. Sgt. Wanda Anthony is a black female, who was assigned to the desk. PO Robin Lestrade, a white female, was the assigned domestic violence officer, and PO Jazmin Gorislavtev, a Hispanic female, who was assigned to the Staten Island Mall. PO Gorislavtev confirmed this assignment in her memo book (encl. 14A-J).

SPRINT

There was no SPRINT report regarding this incident (encl. 21B).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a notice of claim with the City of New York as of September 25, 2013, with regard to the incident (encl. X).

Civilian's Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian's CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 4G).

Subject Officers' CCRB History

- Det. Reich has been a member of the service for eleven years and there are two substantiated CCRB allegations against him. In CCRB case number 200503310, question/stop and refusal to provide name and shield number allegations were substantiated against Det. Reich, and charges were recommended for both. The NYPD penalty was Instructions (encl. 4A-C).
- Det. Fahmy has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 4D-E).
- Sgt. Farren has been a member of the service for twelve years and there are no substantiated CCRB allegations against him (encl. 4F).

Conclusion

Identification of Subject Officers

Det. Reich and Det. Fahmy confirmed that they stopped § 87(2)(b) at the time and place of occurrence. § 87(2)(g)

§ 87(2)(b) described the officer that searched her vehicle as a Hispanic male in his thirties, 5'7", chunky build with short, black hair, which is similar to Det. Reich's pedigree. However, while § 87(2)(b) reported that Det. Fahmy stayed with § 87(2)(b) while Det. Reich spoke to her, Det. Fahmy and Det. Reich testified that they had the opposite roles. Det. Reich and Sgt. Farren

testified that they entered the deli together to review the video footage. Furthermore, Det. Fahmy acknowledged questioning § 87(2)(b) asking her to exit her vehicle, and looking therein. § 87(2)(b)

§ 87(2)(g)

Because Sgt. Anthony is a black female, she did not match the description that § 87(2)(b) provided of the female officer that frisked her, leaving PO Lestrade and PO Gorislavtev as the viable options listed on the roll call. On October 6, 2014, § 87(2)(b) was shown photo arrays that included photographs of PO Lestrade and PO Gorislavtev, and she did not recognize them. Thus, the officer that frisked § 87(2)(b) was not definitively either of the female officers on duty according to the roll call, and there was no SPRINT report corresponding to the incident from which responding units could be identified. Additionally, none of the officers interviewed acknowledged calling a female officer to the scene—Det. Fahmy believed that a female officer came to the scene, but did not know who had called for her. As such, the investigation could not determine the identity of the female officer that frisked § 87(2)(b). However, as this female officer was called to the scene for the purpose of frisking § 87(2)(b) she would not be responsible for justifying the frisk. As the investigating officers, Det. Reich and Det. Fahmy would have borne this responsibility. Additionally, according to the timeline presented by § 87(2)(b) Sgt. Farren was on the scene for the alleged frisk. The officers' testimonies corroborate his presence because he arrived with PO Marshall to verify § 87(2)(b)'s arrest, and they both observed § 87(2)(b) on scene. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: Det. Michael Fahmy questioned § 87(2)(b)

§ 87(2)(g)

It is undisputed that § 87(2)(b) became upset and denied knowing § 87(2)(b) or having any conversation with him.

Det. Fahmy observed § 87(2)(b)'s hands make contact with § 87(2)(b)'s hands as she passed him an object, although Det. Fahmy could not see what the object was. He believed that § 87(2)(b) removed the object from her pocketbook. He further believed that he had observed a hand to hand narcotics transaction based on his training, and the location, where such transactions had reportedly taken place. Upon his arrest, § 87(2)(b) told the detectives that he had asked § 87(2)(b) for a cigarette, which she had provided. Although § 87(2)(b) initially told Det. Fahmy that she did not know § 87(2)(b) or give him anything, she later admitted that she had given him a cigarette after Det. Fahmy explained his suspicion that she and § 87(2)(b) had been involved in a narcotics transaction.

Det. Reich also observed § 87(2)(b) and § 87(2)(b) interact inside the store, directly in front of the door, which was open. Det. Reich saw § 87(2)(b) and § 87(2)(b) touch hands, but was not sure whether they conversed prior to doing so. He did not know whether they exchanged any object or currency when they touched hands. Det. Reich suspected that this brief touch between their hands represented a hand to hand narcotics transaction, but could not explain in detail what such transactions looked like, or why this one appeared to be one. He

suspected that § 87(2)(b) and § 87(2)(b) had engaged in such a transaction because they were in a narcotics-prone location, and their interaction did not resemble a friendly handshake.

Upon Det. Reich's approach, § 87(2)(b) dropped a quantity of heroin onto the ground, and was consequently placed under arrest, which is when he reported that he had asked § 87(2)(b) for a cigarette inside the store. Det. Reich checked the deli's camera footage, and although § 87(2)(b) and § 87(2)(b) were visible, it was unclear whether they engaged in a hand to hand narcotics transaction.

§ 87(2)(g)

An officer must have an objective credible reason to approach an individual and request information. He may ask accusatory questions of such person if founded suspicion of criminality exists. When an officer has reasonable suspicion that an individual has committed, is committing, or is about to commit a crime, he may stop that individual. People v. Debour, 40 N.Y.2d.210 (1976) (encl. 1A-K). People v. Hollman, 79 N.Y.2d 181 (1992) (encl. 2C-J). If an officer observes a transaction, but not the transfer of currency or an object readily identifiable via some trademark of an illegal substance, such an observation does not constitute reasonable suspicion to stop the participants, even if the officer is trained in narcotics investigation and the location is classified as drug-prone. People v. Thompson, 4 Misc. 3d 126A (App. Term, 2nd Dept. 2004) (encl. 2A-B).

§ 87(2)(g)

Allegation B—Abuse of Authority: Det. Mathew Reich threatened to arrest § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) testified that when she discussed § 87(2)(b) with Det. Reich, he told her, "Stop crying like a baby, or I'll handcuff you." No officer interviewed heard Det. Reich make such a threat, or any discussion of § 87(2)(b)'s arrest. § 87(2)(g)

Allegation C—Abuse of Authority: Det. Michael Fahmy searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D—Abuse of Authority: Det. Michael Fahmy initiated the search of § 87(2)(b)

§ 87(2)(b) alleged that the officer that searched her vehicle entered through the driver's door so that his whole body was inside. From there, he searched the glove compartment, removing all of its contents and placing them on the floor. He then opened the back door and searched the back seats before opening and searching the trunk. This officer also searched her pocketbook, which she left on the passenger's seat. Det. Fahmy testified that after § 87(2)(b) provided inconsistent answers to his questions regarding her interaction with § 87(2)(b) he asked her to exit her vehicle to protect his safety. He added that he could not see her hands or movements inside the car, and had observed her make movements with her arms while yelling and crying. When he asked her to provide identification, she fumbled with her wallet, but he could not describe her actions beyond that she yelled at him to ask what the situation was about. Det. Fahmy did not cite any additional reason why § 87(2)(b) represented a particular threat to his safety while inside her vehicle.

When § 87(2)(b) exited her vehicle, she left the driver's door open. Det. Fahmy approached the open door, and examined the interior of the car from outside of it. He then walked around to the passenger's side, and examined the interior of the car from that side. He denied that he put his head or any part of his body inside the vehicle, opening any other door or the trunk, or searching her pocketbook. He reported that he saw groceries inside the vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In order for an officer to enter a civilian's vehicle and inspect the personal effects therein, he must have both reasonable suspicion that criminality is afoot, and also a describable basis for believing in the presence of a particular and immediate threat to his safety. In the event that the vehicle's occupants have been removed, and the officer lacks the probable cause necessary for the civilian's arrest, he is not legally entitled to examine the interior of a stopped car unless he has accumulated information during his investigation to suggest the likely presence of a weapon inside the vehicle. This suspicion of a weapon's presence should be derived from the detection of objective indicators of such, rather than based on a hunch or gut reaction. Furtive movements, which can reasonably result from nervousness upon a police encounter, cannot alone validate an intrusion into the interior of a vehicle. People v. Newman, 96 A.D.3d 34 (1st Dep't 2012) (encl. 2G-K). In the absence of an arrest, a warrantless search of a defendant's bag is only permissible if based on probable cause to believe that the bag contains evidence of a crime, and exigent circumstances—by virtue of an immediate threat to the general public, arresting officer, or the preservation of evidence—call for the immediate search of the bag. People v. Green, 31 Misc.3d 1238A (Sup. Ct., Bronx Co. 2011) (encl. 2P-S).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

Allegation E—Abuse of Authority: Det. Michael Fahmy facilitated the frisk of § 87(2)(b)

§ 87(2)(b)

Allegation F—Abuse of Authority: Det. Mathew Reich facilitated the frisk of § 87(2)(b)

Allegation G—Abuse of Authority: Sgt. Justin Farren supervised the frisk of § 87(2)(b)

§ 87(2)(b) said that Det. Reich informed her that they had to wait for female officers to respond to the scene so that she could be searched. After about forty minutes, two female officers arrived in a marked vehicle, and one of them frisked § 87(2)(b). When the frisk was complete, the female officer told Det. Reich, “She’s clean.” None of the officers interviewed specifically recalled any female officer responding to the scene or § 87(2)(b) being frisked. However, Det. Fahmy believed that a female officer had been called to the scene to frisk § 87(2)(b) as dictated by standard protocol upon the stop of a female for a suspicion of a drug sale. Det. Reich assessed it as procedure when the suspect was to be arrested. Det. Marshall explained that it was standard procedure to investigate both individuals involved in a hand to hand transaction, and that he was told that § 87(2)(b) was “clean,” which corroborated § 87(2)(b)’s account of the incident.

§ 87(2)(g)

[REDACTED]

Det. Reich explained that he completed a UF250 report because § 87(2)(b) was suspected of criminal possession of a controlled substance, and of her “actions.” He specified that she yelled and cried, and classified her as “very irate.” He did not testify to having any suspicion that § 87(2)(b) was a threat to his safety.

An officer is authorized to frisk an individual only if the officer reasonably suspects that the individual threatens physical injury to the officer by virtue of being armed. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 1A-K). Even if an officer has probable cause to arrest an individual, a frisk is not authorized prior if arrest is not yet in effect. People v. Driscoll, 2012 N.Y. Slip Op. 9097 (3rd Dept. 2012) (encl. 3A-B).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation H—Abuse of Authority: An officer searched § 87(2)(b)

§ 87(2)(b) testified that one of the female officers that responded to the scene frisked and searched her. None of the officers interviewed recalled the presence of the female officer on scene, and could not confirm any frisk or search of § 87(2)(b). As discussed in the Identification of Subject Officers section, the investigation could not identify the female officer that responded to the scene to frisk § 87(2)(b).

Per the fellow-officer rule, even without personal knowledge sufficient to establish probable cause, an officer may effect a lawful arrest if acting upon the direction of or as a result of communication with a fellow officer, as long as the police as a whole were in possession of the information necessary to demonstrate probable cause. People v. Powell, 2012 N.Y. Slip Op. 8342 (2nd Dept. 2012) (encl. 3I-K).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g) [Redacted]
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Investigator: _____
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Supervisor: _____
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